

## SENATE BILL NO. 317

INTRODUCED BY C. KAUFMANN

A BILL FOR AN ACT ENTITLED: "AN ACT INCREASING THE TAX ON TOBACCO PRODUCTS OTHER THAN CIGARETTES AND ON MOIST SNUFF; REVISING THE ALLOCATION OF THE TAX; AMENDING SECTIONS 16-11-111 AND 16-11-119, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

**Section 1.** Section 16-11-111, MCA, is amended to read:

**"16-11-111. Cigarette, tobacco products, and moist snuff sales tax -- exemption for sale to tribal member.** (1) (a) A tax on the purchase of cigarettes for consumption, use, or any purpose other than resale in the regular course of business is imposed and must be precollected by the wholesaler and paid to the state of Montana. The tax is \$1.70 on each package containing 20 cigarettes. Whenever packages contain other than 20 cigarettes, there is a tax on each cigarette equal to 1/20 the tax on a package containing 20 cigarettes.

(b) The tax computed under subsection (1)(a) applies to illegally packaged cigarettes under 16-11-307.

(2) The tax imposed in subsection (1) does not apply to quota cigarettes.

(3) Subject to the refund or credit provided in subsection (4), the tax must be precollected on all cigarettes entering a Montana Indian reservation.

(4) Pursuant to the procedure provided in subsection (5), a wholesaler making a sale of cigarettes to a retailer within the boundaries of a Montana Indian reservation may apply to the department for a refund or credit for taxes precollected on cigarettes sold by the retailer to a member of the federally recognized Indian tribe or tribes on whose reservation the sale is made. A wholesaler who does not file a claim within 1 year of the shipment date forfeits the refund or credit.

(5) The distribution of tax-free cigarettes to a tribal member must be implemented through a system of preapproved wholesaler shipments. A licensed Montana wholesaler shall contact the department for approval prior to the shipment of the untaxed cigarettes. The department may authorize sales based on whether the quota, as established in a cooperative agreement between the department and an Indian tribe or as set out in this chapter, has been met. If authorized as a tax-exempt sale, the wholesaler, upon providing proof of order and delivery to a retailer within the boundaries of a Montana Indian reservation selling cigarettes to members of a

1 federally recognized tribe or tribes of that reservation, must be given a refund or credit. Once the quota has been  
2 filled, the department shall immediately notify all affected wholesalers that further sales on that reservation must  
3 be taxed and that a claim for a refund or credit will not be honored for the remainder of the quota period. Quota  
4 allocations are not transferable between quota periods or between reservations.

5 (6) The total amount of refunds or credits allowed by the department to all wholesalers claiming the  
6 refund or credit under subsection (4) for any month may not exceed an amount that is equal to the tax due on the  
7 quota allocation. The department shall determine the amount of refunds or credits for each Indian reservation at  
8 the beginning of each fiscal year, using the most recent census data available from the bureau of Indian affairs  
9 or as provided in a cooperative agreement with the tribe or tribes of the Indian reservation.

10 (7) There must be collected and paid to the state of Montana a tax of ~~50%~~ 118% of the wholesale price,  
11 to the wholesaler, of all tobacco products other than cigarettes and moist snuff. The tax on moist snuff is ~~85 cents~~  
12 \$2.01 an ounce based upon the net weight of the package listed by the manufacturer. For packages of moist snuff  
13 that are less than or greater than 1 ounce, the tax must be proportional to the size of the package. Tobacco  
14 products shipped from Montana and destined for retail sale and consumption outside the state are not subject  
15 to this tax.

16 (8) The tax imposed by subsection (7) must be precollected and paid by a wholesaler to the department  
17 upon sale to a Montana retailer. A wholesaler who fails to report or pay the tax required by this part must be  
18 assessed penalty and interest as provided in 15-1-216.

19 (9) A retailer who purchases tobacco products for resale on which the tobacco products tax has not been  
20 collected and paid to the department shall comply with all the provisions of this part and the rules adopted to  
21 implement this part as if it were a wholesaler.

22 (10) A retailer must assume that the tobacco products tax has not been collected and paid to the  
23 department in the absence of a statement on the retailer's invoice or sales slip for the tobacco products that states  
24 that the applicable Montana tobacco products tax is included in the total billing cost."  
25

26 **Section 2.** Section 16-11-119, MCA, is amended to read:

27 **"16-11-119. Disposition of taxes.** (1) Cigarette taxes collected under the provisions of 16-11-111 must,  
28 in accordance with the provisions of 17-2-124, be deposited as follows:

29 (a) 8.3% or \$2 million, whichever is greater, in the state special revenue fund to the credit of the  
30 department of public health and human services for the operation and maintenance of state veterans' nursing

1 homes;

2 (b) 2.6% in the long-range building program account provided for in 17-7-205;

3 (c) 44% in the state special revenue fund to the credit of the health and medicaid initiatives account  
4 provided for in 53-6-1201; and

5 (d) the remainder to the state general fund.

6 (2) If money in the state special revenue fund for the operation and maintenance of state veterans'  
7 nursing homes exceeds \$2 million at the end of the fiscal year, the excess must be transferred to the state  
8 general fund.

9 (3) The taxes collected on tobacco products, other than cigarettes, must in accordance with the  
10 provisions of 17-2-124 be deposited as follows:

11 (a) ~~one-half~~ 26% in the state general fund; ~~and~~

12 (b) ~~one-half~~ 26% in the state special revenue fund account for health and medicaid initiatives provided  
13 for in 53-6-1201;

14 (c) 16% in the community health center account provided for in 50-4-815; and

15 (d) 32% in an account in the state special revenue fund to be used by the state auditor for the program  
16 to assist eligible small employers with the cost of providing health insurance benefits to eligible employees under  
17 Title 33, chapter 22, part 18."

18  
19 **NEW SECTION. Section 3. Effective date.** [This act] is effective on passage and approval.

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